

SBCivil Writ Petition No.3441/2006

Nathu Khan
V.
State of Rajasthan & Ors.

Date of Order :: 14th July, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr.P.P.Choudhary, for the petitioner.

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A challenge to the correctness, validity and propriety of the judgment dated 23.6.2006 passed by Rajasthan Civil Services Appellate Tribunal, Rajasthan, Jaipur in Appeal No.1061/2004 is given by the petitioner.

In brief, facts of the case are that the petitioner, who is holding the post of Physical Teacher in Department of Education and was transferred from Upper Primary School, Sabji Mandi, Jaitaran to Upper Primary School, Kothar (Bali) District Pali by order dated 3.9.2004 passed by District Education Officer (Elementary Education), Pali. Aggrieved by the order dated 3.9.2004 petitioner preferred an appeal before Rajasthan Civil Services Appellate Tribunal, Jaipur wherein by order dated 22.9.2004 operation of the order dated 3.9.2004 was stayed. The appeal

ultimately came to be rejected by judgment dated 23.6.2006.

while giving challenge to the judgment dated 23.6.2006 the contention of counsel for the petitioner is that administrative exigency existing at the time of issuance of order dated 3.9.2004 was not surviving at the time of final disposal of the appeal, therefore, the appellate tribunal should have declared the order of transfer dated 3.9.2004 inoperative but the tribunal decided the appeal on merits and rejected the same. To substantiate the contention the petitioner has placed on record copies of certain judgments passed by this Court under Article 226 of Constitution of India wherein this Court directed the competent authorities to pass fresh transfer orders if required as the transfer orders were not made operative by interim orders.

Heard counsel for the petitioner.

The writ petition on its face is devoid of merits and is absolutely misconceived. The petitioner was transferred by order dated 3.9.2004 and being aggrieved by same he approached the tribunal to examine validity, correctness and propriety of the order aforesaid. It is true that by order dated 22.9.2004 operation of the order dated 3.9.2004 was stayed and till disposal of appeal by tribunal vide

judgment dated 22.6.2006 effect was not given to it, but it does not preclude the tribunal to decide the appeal on merits. In fact the tribunal is under obligation to enter into the merits of the order, validity, correctness and propriety of that was challenged by the petitioner before it. The transfer order was not given effect due to interim order of the tribunal and that interim order does not amount to final adjudication of appeal. If the contention of the petitioner is accepted then it shall be meant that in every appeal where an interim order is passed staying operation of an order of transfer and the appeal remains pending for some time then the tribunal should not examine validity of the order under challenge. This will amount acceptance of appeal without its adjudication.

Beside the above, whether administrative exigency exists or not, that is to be decided by the authority competent who has passed the order of transfer and not by Courts. The judgments, reference of which is given by the petitioner in the writ petition and copies are annexed to the writ petition, are of no consequence as in all those matters this Court while exercising powers under Article 226 of Constitution of India molded the relief prayed for on the count that by a flux of time the order of transfer in those cases lost its force. The tribunal exercises appellate powers and those powers cannot be compared

with the powers under Article 226 of the Constitution of India. Appellate Tribunal is always required to examine validity and correctness of an order under challenge before it, if the same has not become inoperative being withdrawn or on the count that its adjudication shall be of no consequence. In the instant matter too the tribunal has discharged its statutory obligation by deciding the appeal on merits. No illegality, therefore, is committed by the tribunal.

The writ petition is accordingly dismissed.

(GOVIND MATHUR),J.

kkm/ps.